

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0109
Sales and Use Tax
For The Tax Period 2004**

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Issue

I. Sales and Use Tax -Imposition of Use Tax

Authority: IC § 6-8.1-5-1(b), IC § 6-2.5-2-1(a), IC § 6-2.5-3-2(a), 45 IAC 2.2-3-5(b).

The taxpayer protests the imposition of use tax.

Statement of Facts

The taxpayers purchased an automobile in Indiana in May 2004. They did not pay sales tax on the transaction. The Indiana Department of Revenue, hereinafter the "department," assessed use tax, interest, and penalty on their use of the automobile. The taxpayers protested this assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition of Use Tax

Discussion

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. Id.

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-3-2(a) imposes a complementary excise tax, the use tax, on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes. The department's interpretation of this law is stated at 45 IAC 2.2-3-5(b) as follows:

The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use

tax unless such purchaser is entitled to one of more of the exemptions as provided on form ST-108.

At the time that the taxpayers purchased the vehicle in question, they signed an ST-137 form stating that they were residents of another state who purchased a vehicle to be registered in the other state. That form is no longer in use.

The taxpayers provided substantial documentation including drivers' licenses issued in 2000 and a filing of the Florida homestead exemption in 2000. These documents indicated that they became residents of the State of Florida in 2000. They also provided documentation indicating that they registered and licensed the car in Florida shortly after the purchase. The use tax was improperly imposed in this situation.

Finding

The taxpayer's protest is sustained.

KMA/BK/DK/06/14/08